NO. 86-305

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM 1986

RICHARD REYNOLDS

Petitioner

versus

INGALLS SHIPBUILDING DIVISION,
LITTON SYSTEMS, INC.

Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENT IN OPPOSITION

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STATEMENT OF THE CASE

A succinct statement of the facts is set out in the opinion of the Fifth Circuit Court of Appeals under the heading "FACTUAL AND PROCEDURAL BACKGROUND." (Appendix 3-A)

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1. Litton Systems, Inc., is a wholly owned subsidiary of Litton Industries, Incorporated.

ARGUMENT

I.

THE PETITION DOES NOT SET OUT A REASON FOR GRANTING THE WRIT.

The petitioner does not contend that the decision of the Fifth Circuit Court of Appeals sought to be reviewed is in conflict with any decision rendered by or in any other Circuit. (Supreme Court Rule 17(a))

The decision of the Fifth Circuit Court of Appeals is not "in conflict with the applicable decisions of this Court." (Supreme Court Rule 17(c))

II.

THE BROAD QUESTIONS PRESENTED TO THIS COURT FOR REVIEW WERE NOT ADDRESSED BY THE DISTRICT COURT NOR BY THE FIFTH CIRCUIT COURT OF APPEALS.

The broad questions presented to this court for review were not addressed by the District Court (Supplemental Appendix 25-A thru 33-A) nor by the affirming opinion of the Fifth Circuit Court of Appeals (Appendix 1-A thru 17-A).

In this Court the petitioner has abandoned his Jones Act, unseaworthiness and general maritime negligence claims. He seeks certiorari only of the grant of summary judgment by the District Court on his asserted 33 USC 905(b) claim, affirmed by the Fifth Circuit Court of Appeals.

The Fifth Circuit Court of Appeals held that under the exclusivity provisions of the LHWCA the petitioner Reynolds, as a shipbuilder employee, could not maintain an action under 33 USC 905 (b) against his respondent shipbuilder employer, saying:

> "Reynolds' employer, Litton, was engaged in shipbuilding services. Litton's duties as 'operator' were highly circumscribed, specifically defined, and merely incidental to its contractual obligation to build a ship. CF. DUCOTA v. INTERNATIONAL OPERATING CO., 678 F.2d 543, 546 (5th Cir. 1982) (party cleaning and loading a barge not an owner pro hac vice because it 'did not have the right to use the barge for its own purpose in maritime commerce'). Reynolds, moreover, worked for Litton as a shipfitter. His brief voyage on the Ticonderoga was a volunteer sojourn which occurred while Litton was still in the process of building the ship. Reynolds is clearly barred from bringing an action under 905(b)." (Appendix 16-A and 17-A)

This holding is supported by every federal court that has considered the "operator" or "operator pro hac vice" provisions of 33 U.S.C. 905(b). RAYMARK v. BATH IRON WORKS, 772 F.2d 1007, 1012 (1st Cir. 1985) Cert. denied _____U.S._____, 106 S.Ct. 1994 (1986); AMOX v. BARGE No. ATB 99, 587 F.Supp. 1529, 1532 (D. Alaska (1984); KELLER v. UNITED STATES, 557 F.Supp. 1218, 1223-29 (D.N.H. 1983); BERNIER v. JOHNS-MANVILLE SALES CORP., 547 F.Supp. 389 (D.Me. 1982); DUCOTE v. INTERNATIONAL OPERATING CO. OF LA., INC., 678 F.2d

543, 545 (5th Cir. 1982); BOSSARD v. PORT ALLEN MARINE SERVICE, INC., 624 F.2d 671, 672 (5th Cir. 1980); HESS v. PORT ALLEN MARINE SERVICES, INC., 624 F.2d 673, 674 (5th Cir. 1980); OLSEN v. TODD SHIPYARDS CORPORATION, 453 F.Supp. 568, 571 (W.D. Wash. 1977).

CONCLUSION

We respectfully submit that the petition for certiorari should be denied.

Respectfully submitted,

INGALLS SHIPBUILDING DIVISION,
LITTON SYSTEM, INC., Respondent

By: Karl Wiesenburg

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CERTIFICATE

I, Karl Wiesenburg, do hereby certify that on or before the 19th day of September, 1986 I mailed, postage prepaid, forty (40) copies of the Brief of Respondent in Opposition to the petition for certiorari to the United States Court of Appeals for the Fifth Circuit, to the Clerk of the Supreme Court of the United States, One First Street N.E., Washington D.C. 20543, and mailed three (3) copies of the brief, postage prepaid, to Attorneys Paul S. Minor and Judy M. Guice of the firm Minor and Benton, Post Office Box 1388, 310 Main Street, Biloxi, MS 39533, counsel of record for the petitioner.

Karl Wiesenburg

Karl Wiesenburg